THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSEPH EMANUELSON Plaintiff, v. THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO, RALEIGH SCHOOL OF NURSE ANESTHESIA, A NON-PROFIT CORPORATION, ROBIN E. REMSBURG, IN HER OFFICIAL CAPACITY AS DEAN OF THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO SCHOOL OF NURSING, AND FRANKLIN D. GILLIAM JR. IN HIS OFFICIAL CAPACITY AS CHANCELLOR OF THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO, Defendants.	Civil Action No. 1:17-cv-534

COMPLAINT

(Violation of Due Process Clause of Fourteenth Amendment to U.S. Constitution)

(Deprivation of Civil Rights Under 42 U.S. C. § 1983)

(Violation of Due Process Under the North Carolina Constitution)

(Disability Discrimination in Violation of the ADA)

(Disability Discrimination Under Section 504)

HERE NOW COMES the Plaintiff Joseph Emanuelson, by and through his undersigned counsel and complains of the Defendant University of North Carolina at

Greensboro and hereby alleges as follows:

PARTIES

1. Plaintiff Joseph Emanuelson is a citizen and resident of Palm Desert, California.

2. Defendant University of North Carolina at Greensboro is one of the campuses or universities of the University of North Carolina System and is located in Guilford County, North Carolina.

3. Pursuant to N.C. Gen. Stat. §§ 116-3, The University of North Carolina is a public multicampus university established and operated by the State of North Carolina and is a body politic and corporate, capable in law to be sued in all courts, and Defendant University of North Carolina at Greensboro is one of the constituent institutions of the University of North Carolina, capable in law to be sued in all courts whatsoever, with its principal office in Guilford County, North Carolina.

4. Defendant Raleigh School of Nurse Anesthesia is a non-profit corporation duly organized under the laws of the State of North Carolina.

5. Defendant Robin E. Remsburg is the Dean of the School of Nursing at the University of North Carolina at Greensboro ("UNC-G"), and is sued in her official capacity only.

6. Franklin D. Gilliam Jr. is the Chancellor of the University of North Carolina at Greensboro, and he is sued in his official capacity only.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331.

8. Venue is properly laid in the United States District Court for the Middle District of North Carolina, as authorized by 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

9. Plaintiff enrolled in the University of North Carolina at Greensboro in August of 2013, seeking to obtain a Master's of Science in Nursing ("MSN") degree with a concentration in nurse anesthesia. Plaintiff also enrolled at Raleigh School of Nurse Anesthesia ("RSNA"), a non-profit associated with UNC-G's program.

10. UNC-G's MSN program is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), an Illinois-based non-profit that accredits more than 21,000 healthcare organizations and programs throughout the United States.

11. The program, among other things, required completion of both academic courses and practicum courses, which were to be completed in a supervised clinical setting. In Plaintiff's case, the practicum courses were to be completed through RSNA.

12. In December of 2013, Plaintiff reported to the chief Nurse Anesthetist at Duke Raleigh Hospital incidents of harassment involving a supervising preceptor Carrie Patrick in a practicum course. On April 4, 2014, Plaintiff again reported an incident of harassment and a physical assault from a supervising preceptor, Cynthia Barnes.

13. On or about April 29, 2014, Plaintiff was diagnosed with anxiety and major depression.

14. On or about May 7, 2014, Plaintiff was informed by the UNC-G staff that he had received a failing grade in his Cell Pathophysiology course. The university policy mandated that this failing grade would result in Plaintiff's dismissal from the program. Plaintiff at this time was dismissed from the program.

15. On or about May 8, 2014, Plaintiff wrote a letter to the Raleigh School of Nurse Anesthesia detailing how the experiences he had while enrolled had been traumatic and exacerbated his anxiety, resulting in difficulties with his academic courses.

16. On or about May 14, 2014, Plaintiff filed an informal appeal of his dismissal from the program pursuant to university policies.

17. On or about June 11, 2014, Dr. Sandeep Vaishnavi, who is board-certified in behavioral neurology and neuropsychiatry, in a letter to UNC-G and RSNA, identified Mr. Emanuelson as having "generalized anxiety disorder and obsessive-compulsive disorder." In the letter, Dr. Forbes notes that Mr. Emanuelson had mentioned encountering a "traumatic incident" on April 4, 2014 during one of his clinical rotations. He added that such events can "exacerbate anxiety and affect attention and focus consequently." He concludes the letter with, "Please feel free to contact our office if you have any questions or concerns."

18. After several phases of informal appeal pursuant to university policy, the dean

ultimately granted Plaintiff's request to be given a retroactive withdrawal from the course he failed and continue in the program.

19. To address his disabilities, Plaintiff registered with UNC-G's Office of Accessibility, Resources and Services ("OARS") on or about June 29, 2014. The university provided him additional time and a quiet environment for tests, but gave no accommodations for a clinical environment. Plaintiff objected to the decision to not offer accommodations in the clinical setting, but no accommodations were granted. Similarly, RSNA offered no accommodations despite having knowledge of Plaintiff's disabilities and request for accommodations.

20. On or about July 28, 2014, Plaintiff signed a "Learning Contract" with UNC-G and the Raleigh School of Nursing Anesthesia, outlining various responsibilities of the parties.

21. Paragraph 9 of the "Learning Contract" provides:

> "Any concerns of mistreatment or abuse by a preceptor will be reported immediately by phone to the RSNA faculty member overseeing the clinical experience. The faculty member will remove the student from the supervision of the clinical preceptor and reassign to another preceptor. The RSNA Associate Director of Clinical Education will follow up with the clinical agency regarding the alleged treatment / abuse and submit a report to the RSNA Director and UNCG Associate Dean for Graduate Studies."

22. The university did not abide by the terms of Paragraph 9 of the learning contract on multiple occasions. Particularly it failed to submit a report to the RSNA Director and UNCG Associate Dean for Graduate studies following allegations of mistreatment.

23. On or about July 31, 2014, Plaintiff sent an email to the Dean of Students, Defendant

Robin Remsburg, and UNC-G's Affirmative Action Officer expressing concerns of possible retaliation within RSNA for reporting incidents of harassment by faculty and staff during his prior appeal.

24. On or about August 4, 2014, in a letter to RSNA, Dr. Hasan A. Baloch, a Psychiatrist, wrote that Mr. Emanuelson had been diagnosed with Obsessive Compulsive Disorder and Major Depressive Disorder. Mr. Baloch also notes that Mr. Emanuelson's reported conflict with an instructor "seemed to cause worsening in his mental condition and apparently led to worsening academic performance and his subsequent dismissal from school." Upon information and belief, UNC-G's failure to abide by the terms of the learning contract also exacerbated Plaintiff's disabilities.

25. On or about September 15, 2014, Plaintiff reported to Clinical Coordinator Amanda Michael that his clinical preceptor had made uncomfortable and made unwanted contact with him during a clinical course at WakeMed Raleigh. Plaintiff was assigned a new preceptor.

26. On or about September 26, 2014, during a class lecture, Program Director Nancy Maree, with little explanation, accused Plaintiff of smiling during her lecture and questioned his commitment to the program and addressed ADA testing accommodations in front of other students. Upon information and belief, this was intended to harass Plaintiff, a student with disabilities who had previously complained of difficulties with preceptors and RSNA

staff and faculty. Plaintiff filed a complaint about this treatment with the Graduate School Dean William Wiener and the Dean of the Students, Brett Carter.

27. On or about May 1, 2015, Plaintiff was informed by CRNA Laura Smith at WakeMed that Julie Brewer, a CRNA at WakeMed and clinical preceptor for RSNA students, was making disparaging comments about Plaintiff's capabilities as a nurse and student. Plaintiff again reported this conduct to RSNA faculty and requested to be re-assigned to another perceptor. UNC-G staff denied the request.

28. On May 4, 2015, Plaintiff completed all academic coursework for the program.

29. On September 18, 2015, Plaintiff completed his second rotation of independent practice at Rex Hospital. Unlike his work at WakeMed, he received no unsatisfactory marks from supervising preceptors. Further, Mr. Emanuelson was put on independent practice at Rex Hospital during two of his clinical rotations, meaning he was sufficiently trusted to provide care with very little supervision. Upon information and belief, he was placed in independent practice at a much earlier point than other similarly situated students. Upon information and belief, due to the nature of independent practice, he also did not encounter the same type encounters that triggered his disabilities in other clinical settings.

30. On October 8, 2015, Plaintiff was sent home from a clinical practicum at WakeMed, ostensibly for poor performance, by clinical preceptor Julie Brewer, who was still overseeing Plaintiff despite his objections and in contradiction to the Learning Contract signed by

himself and UNC-G staff. During a meeting with RSNA faculty Linda Stone and Nancy Shedlick, the faculty expressed concerns that Plaintiff was the possible target of harassment at WakeMed.

31. On October 8, 2015, during his supervision by preceptor Julie Brewer, Mr. Emanuelson felt an ever-increasing amount of anxiety from being forced to work with Ms. Brewer, and this is consistent with his doctors' assessments of his disabilities.

32. On October 11, 2015, Plaintiff met with clinical preceptors and RSNA faculty at WakeMed Hospital in Raleigh. At the meeting, Plaintiff was accused of falsifying medical records for a patient. Plaintiff did not return to the clinical site pending an investigation of the matter. Upon information and belief, an investigation was conducted by Defendant Robin E. Remsburg, Dean of the UNC-Greensboro School of Nursing, pursuant to UNC-G School of Nursing Policy.

33. On or about October 20, 2015, Julie Brewer wrote the evaluation for Plaintiff regarding the October 8, 2015 incident in which he was sent home.

34. On or about October 29, 2015, UNC-G completed its investigation of an alleged unsafe practice by Plaintiff at RSNA. At the time, the results of the investigation were not disclosed to Plaintiff.

35. On or about November 3, 2015, Plaintiff met with RSNA faculty and the Dean of the UNC-G School of Nursing to discuss the alleged unsafe practice.

36. On or about November 5, 2015, preceptor Laura Smith submitted a statement to UNC-G outlining what she perceived as mistreatment of Plaintiff regarding the allegations of an unsafe practice.

37. On or about November 10, 2015, Plaintiff received notice from Defendant Remsburg that he was dismissed from the program for an "unsafe practice."

38. On or about November 11, 2015, Plaintiff submitted a written notice of appeal to the UNC-G School of Nursing Appeals Committee.

39. On or about November 23, 2015, Mr. Emanuelson retained pre-litigation counsel, attorney Ann Paradis, to represent him in his appeal. He subsequently informed the school of her retention and requested her presence at any hearings regarding his enrollment.

40. N.C. Gen. Stat. § 116-40.11 provides, in relevant part, that:

> (a) Any student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the student's expense, by a licensed attorney or non-attorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student shall not have the right to be represented by a licensed attorney or non-attorney advocate in either of the following circumstances:
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>> If the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations. For any allegation of "academic dishonesty" as defined by the constituent institution.

41. Upon information and belief, the Student Handbook outlining RSNA appeal

procedures also entitled Mr. Emanuelson to have an attorney present at the appeal hearing.

42. On or about December 4, 2015, the School of Nursing Appeals Committee held a hearing on Plaintiff's appeal of his dismissal. Despite the provisions of N.C. Gen. Stat. § 116-40.11, Plaintiff was denied his right to counsel at the hearing. Plaintiff was allowed to present a statement on the allegations of an unsafe practice but discouraged from doing so. Plaintiff was not allowed to call or question witnesses. Defendant also presented evidence not previously disclosed to Plaintiff prior to hearing. Defendant had in effect no way of meaningful participation because he had not yet fully received notice of the allegations against him, had been denied counsel to assist him in defending against the allegations and denied the ability to examine the witnesses for or against him. Upon information and belief, these acts also were in contradiction to the UNC-G appeals procedures and those outlined in the RSNA Student Handbook.

43. On or about December 10, 2015, Plaintiff received notice that the School of Nursing Appeals Committee had upheld his dismissal.

44. On or about December 18, 2015, Plaintiff submitted a written notice of appeal to UNC-G Graduate School Dean William Wiener.

45. On or about January 4, 2016, Dean Wiener denied Plaintiff's request for an appeal. Upon information and belief, this was in contravention to stated university policies regarding appeals of dismissals.

46. As Chancellor of the university, Defendant Gilliam oversees all policies and procedures for the university. Plaintiff alleges the Chancellor oversees a set of policies that deny due process to nursing students, including Plaintiff, who are dismissed on allegations of unsafe practices.

47. As Dean of the UNC-G School of Nursing, Defendant Robin Remsburg oversaw the investigation process into the alleged unsafe practice and oversaw much of the appeals process.

48. RSNA acted in concert with other defendants and as an agent of UNC-G.

FIRST CLAIM FOR RELIEF

(42 U.S.C. 1983 against Defendants Remsburg and Gilliam)

49. The allegations in the previous paragraphs are hereby re-alleged and incorporated by reference.

50. Pursuant to the Fourteenth Amendment, Plaintiff has a liberty and property interest in completing the degree he sought to obtain from UNC-G.

51. Defendants Remsburg and Gilliam acted under color of law in dismissing Plaintiff from the program.

52. Defendants Remsburg Gilliam denied Plaintiff due process by creating and/or overseeing a constitutionally inadequate scheme that:

a. Excluded his attorney from a university disciplinary hearing despite Mr.

Emanuelson requesting that she attend and state law providing the right to one;

b. Discouraged Plaintiff from offering a defense to his appeal of his dismissal;

c. Prevented Plaintiff from calling or questioning witnesses;

d. Used ambush evidentiary practices to catch Plaintiff off guard in presenting his case;

e. Disregarded evidence of unfair treatment to Plaintiff;

f. Disregarded university appeal procedures and denying Plaintiff's second appeal;

g. Offered a process that was fundamentally unfair to Plaintiff.

h. Dismissed Plaintiff from the program on arbitrary and capricious grounds;

i. Failed to provide sufficient notice to Plaintiff of the allegations and evidence to be used against him; and

j. Other acts to be proven at trial.

53. The actions alleged in the above paragraph further denied Plaintiff the ability to participate at a meaningful time in a meaningful manner at the hearing on the appeal of his dismissal, as they interfered prejudicially with his ability to defend himself from the allegations resulting in his dismissal.

54. Plaintiff is precluded from seeking monetary damages under 42 U.S.C. § 1983

against a government entity, and the only remedy at law available to Plaintiff is equitable relief. As such, Plaintiff has no remedy at law available and equitable relief is appropriate.

55. Plaintiff's dismissal from the program is an irreparable injury that likely precludes his re-admittance to the program through ordinary means and prevents him from entering a comparable program at another institution to seek the same degree he was seeking at UNC-Greensboro.

56. Plaintiff has expended significant resources, time and effort in obtaining a degree from UNC-G in nurse anesthesia. Plaintiff has completed all necessary steps to obtain such a degree except for completion of 8 weeks of clinical courses.

Second Claim for Relief

(N.C. Const. Art. I, Sec. 19 against Defendants Remsburg and Gilliam)

57. The allegations in the previous paragraphs are hereby re-alleged and incorporated by reference.

58. Pursuant to the N.C. Const. Art. I, Sec. 19, Plaintiff has a liberty and property interest in completing the degree he sought to obtain from Defendants Remsburg and Gilliam.

59. Defendants acted under color of law in dismissing Plaintiff from the program.

60. Defendants denied Plaintiff due process by creating a constitutionally inadequate scheme that:

a. Excluded his attorney from a university disciplinary hearing despite Mr.

Emanuelson requesting that she attend and state law providing the right to one;

b. Discouraged Plaintiff from offering a defense to his appeal of his dismissal;

c. Prevented Plaintiff from calling or questioning witnesses;

d. Used ambush evidentiary practices to catch Plaintiff off guard in presenting his case;

e. Disregarded evidence of unfair treatment to Plaintiff;

f. Disregarded university appeal procedures and denying Plaintiff's second appeal;

g. Offered a process that was fundamentally unfair to Plaintiff.

h. Dismissed Plaintiff from the program on arbitrary and capricious grounds;

i. Failed to provide sufficient notice to Plaintiff of the allegations and evidence to be used against him; and

j. Other acts to be proven at trial.

61. The actions alleged in the above paragraph further denied Plaintiff the ability to participate at a meaningful time in a meaningful manner at the hearing on the appeal of his dismissal, as they interfered prejudicially with his ability to defend himself from the allegations resulting in his dismissal.

62. Plaintiff's dismissal from the program is an irreparable injury that likely precludes his

re-admittance to the program and prevents him from entering a comparable program at another institution to seek the same degree he was seeking at UNC-Greensboro.

63. Plaintiff has expended significant resources, time and effort in obtaining a degree from UNC-G in nurse anesthesia. Plaintiff has completed all necessary steps to obtain such a degree except for completion of 8 weeks of clinical courses.

Third Claim for Relief

(Disability Discrimination in Violation of the ADA Against All Defendants)

64. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

65. UNC-G is a public entity within the meaning of Title II of the ADA, 42 U.S.C § 12131.

66. RSNA acted in concert with UNC-G and itself also violated Plaintiff's rights under the ADA.

67. Plaintiff was and is a qualified disabled individual within the meaning of Title II of the ADA, 42 U.S.C. § 12131.

68. Defendants regard Plaintiff as having a having a mental impairment that substantially limits a major life activity (including learning and working), affecting his ability to successfully complete the MSN program.

69. Plaintiff was and is qualified for the MSN program at UNC-G.

70. With reasonable accommodation, Plaintiff was and is capable of completing his Master's degree.

71. Defendants discriminated against Plaintiff by treating him different than other students based on his disability.

72. Specifically, Defendants discriminated against Plaintiff by refusing to allow him reasonable accommodations, which it allows to other disabled students.

73. Defendants discriminated against Plaintiff by refusing to help him resolve the harassment and discrimination he endured at his clinical rotations.

74. Defendants discriminated against Plaintiff by dismissing him from the Program.

75. Defendants discriminated against Plaintiff by refusing to readmit him to the Program.

76. Defendants' actions constitute a continuing violation of the ADA.

Third Claim for Relief

(Disability Discrimination in Violation of Section 504 Against UNC-G and RSNA)

77. Plaintiff incorporates the above paragraphs as if fully set forth herein.

78. UNC-G is covered by Section 504 of the Rehabilitation Act, as it receives Federal financial assistance. RSNA is also covered for the same reason.

79. Plaintiff was and is a qualified disabled individual with the meaning of Section 504.

80. Plaintiff was and is qualified for the MSN program at UNC-G.

81. With reasonable accommodation, Plaintiff was and is capable of completing the MSN program, with a concentration in anesthesiology.

82. Defendants discriminated against Plaintiff by treating him different than other

students based on his disability.

83. Specifically, defendants discriminated against Plaintiff by refusing to allow him reasonable accommodations, which it allows to other disabled students.

84. Defendants discriminated against Plaintiff by refusing to help him resolve the harassment he received during his clinical rotations.

85. Defendants discriminated against Plaintiff by dismissing him from the Program.

86. Defendants discriminated against Plaintiff by refusing to readmit him to the Program.

87. Defendants' actions constitute a continuing violation of Section 504.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that:

1. The Court grant a temporary injunction reinstating Plaintiff in the UNC-G Nurse Anesthesia program and RSNA;

2. The Court grant a permanent injunction reinstating Plaintiff in the UNC-G Nurse Anesthesia program and RSNA;

3. The court enter judgment in favor of Plaintiff and against Defendant declaring Defendant violated Plaintiff's Constitutional rights to Due Process under the North Carolina Constitution and U.S. Constitution, as well as the ADA and Section 504;

4. That all matters triable by jury be so tried;

5. The Court order such other and further relief as it deems just and proper.

This is the 12th day of June, 2017.

Respectfully submitted,

BRATCHER ADAMS, PLLC

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